National Labor Relations Board



Weekly Summary of NLRB Cases

 Division of Information
 Washington, D.C. 20570
 Tel. (202) 273-1991

 March 23, 2007
 W

 3096
 W

VISIT <u>WWW.NLRB.GOV</u> FULL TEXT <u>C A S E S S U M M A R I Z E D</u>

Hempstead Lincoln Mercury Motors Corp.	Hempstead, NY	1
Homer D. Bronson Co.	Winsted, CT	2
Inter-Disciplinary Advantage, Inc.	Midland, MI	2

OTHER CONTENTS

<u>List of Decisions of Administrative Law Judges</u>	
<u>List of Unpublished Board Decisions and Orders in Representation Cases</u>	
 Uncontested Reports of Regional Directors and Hearing Officers 	
 Request for Review of Regional Directors' Decisions and Directions 	
of Elections and Decisions and Orders	

Press Release (R-2621): NLRB Website is one of the Best in the Federal Government

The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Division of Information has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (www.nlrb.gov). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Information Division, 1099 14th Street, NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. As of August 1, 2003, Admin6istrative Law Judge decisions are on the Web site.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Hempstead Lincoln Mercury Motors Corp. (29-CA-27601; 349 NLRB No. 52) Hempstead, NY March 16, 2007. The Board denied the General Counsel's motion for summary judgment and remanded the proceeding to the Regional Director for further appropriate action. [HTML] [PDF]

In its opposition to the General Counsel's motion, the Respondent's counsel contended that he telephoned the Regional Office on Oct.16, 2006, and spoke with the supervisory attorney assigned to this case. He explained that he missed the Oct.12, 2006 deadline to file an answer to the complaint because of his recent work schedule, and stated that he would fax and send by overnight mail his answer that day. According to Respondent's counsel, the supervisory attorney responded "it was not a problem." The Regional Office received the answer on Oct. 17, without a request for an extension of time. The Respondent's counsel argued that a formal request to file an extension was "obviated" because he had "obtained authorization to file" late. He also submitted that the Regional Office disregarded Section 10280.3 of the Board's Casehandling Manual, Part One, which states: "If an answer has not been filed within the time allowed, counsel for the General Counsel should communicate in writing with respondent's counsel, or with respondent if it is not represented, advising that no answer has been filed . . . and if an answer is not filed within a certain period of time . . ., counsel for the General Counsel will file a Motion for Default Judgment with the Board."

Counsel for the General Counsel confirmed that the Respondent's counsel telephoned the Regional Office on Oct. 16, but did not admit or deny that the supervisory attorney stated that the late filing "was not a problem." She argued that, even if the supervisory attorney made the statement, the Respondent's counsel could not rely on it because the deadline for filing an answer had passed by that time. In addition, Counsel for the General Counsel cited cases holding that the Casehandling Manual is not binding on Regional Office personnel.

The Board found, in the absence of any denial, that the supervisory attorney made the statement attributed to her by the Respondent's counsel. It held that although the General Counsel is correct in asserting that the Respondent was already in default at the time of the telephone conversation, that fact is not dispositive. The Board wrote: "Section 10280.3 of the Casehandling Manual . . . contemplates that additional time will usually be granted after the time for filing the answer has passed, and our case law demonstrates that such informal extensions have been granted in those circumstances. On the facts of this case, we find that the supervisory attorney effectively extended the filing deadline, in a manner akin to that suggested by Casehandling Manual Section 10280.3, by her oral response to counsel for the Respondent."

In a footnote, Member Schaumber noted that the Board general disfavors default judgments. He found it "misleading" to argue that the Casehandling Manual provision regarding untimely filing is not binding while simultaneously holding the Casehandling Manual out to the public, including a link to it on the homepage of the agency's public website, as indicating the manner in which the General Counsel should operate.

(Members Schaumber, Kirsanow, and Walsh participated.)

Charge filed by Teamsters Local 917; complaint alleged violation of Section 8(a)(1) and (5). General Counsel filed motion for default summary judgment Oct. 30, 2006.

Homer D. Bronson Co. (34-CA-9499, et al.; 349 NLRB No. 50) Winsted, CT March 16, 2007. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by various acts, including telling employees that they were prohibited from discussing Auto Workers Region 9 and from soliciting union support during company time; promulgating and maintaining overly broad and discriminatory solicitation and distribution rules; and creating the impression that it was watching employees' union activities. [HTML] [PDF]

Members Liebman and Walsh agreed with the judge that the Respondent violated Section 8(a)(1) in campaign speeches and posters by threatening employees with plant closure and job loss if they chose union representation. They found that the Respondent's speeches and posters, taken as a whole, conveyed unlawful consequences from unionization, rather than lawful, fact-based predictions of economic consequences beyond the Respondent's control.

Chairman Battista would reverse the judge's finding that the Respondent threatened plant closure. He found that there is nothing in the Respondent's campaign posters or speeches indicating that it would penalize employees for choosing union representation by closing its facility. The Chairman held that the Respondent's communications accurately recounted that, in recent years, numerous unionized facilities, including two of its own, had closed; that most of the closed plants were in Connecticut, where its facility was located; and that all of the closed companies employed work forces that had been represented by the same labor organization whose affiliate was now seeking to represent its employees—the UAW.

The Board, in agreeing with the judge that a *Gissel* bargaining order is not appropriate, noted the delay in processing the case and instead primarily relied on the Board's traditional remedies to erase the effects of the Respondent's unlawful conduct. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). Members Liebman and Walsh agreed with the judge that a special remedy was warranted and ordered that the attached notice to employees be read aloud to the employees by the Respondent's president of manufacturing, Joseph Blancato, who was directly and personally involved in many of the violations or, at the Respondent's option, by a Board agent in Blancato's presence. Chairman Battista would not impose the extraordinary remedy. He believes that the Respondent is not a recidivist and that the violations found were not so egregious as to render insufficient the Board's traditional remedies.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Auto Workers Region 9A; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Hartford, Dec. 3-6, 2001, Jan. 7-10, and Feb. 14, 2002. Adm. Law Judge Michael A. Marcionese issued his decision Oct. 10, 2002.

Inter-Disciplinary Advantage, Inc. (7-CA-48706; 349 NLRB No. 49) Midland, MI March 15, 2007. Affirming the administrative law judge's decision, the Board held that the Respondent

violated Section 8(a)(3) and (1) of the Act by discharging employees Kelly Lashbrook, Linda Foran, and Marie Abrakian because of their activities for the Auto Workers; and violated

Section 8(a)(1) by the following conduct: maintaining an overly-broad confidentiality rule that restricts employees in the exercise of their Section 7 rights, creating the impression that it was keeping its employees' union activities under surveillance, threatening to discharge employees who engage in union activity, coercively interrogating employees about their union activities, prohibiting employees from talking about the Union at the workplace while allowing other nonwork-related discussions, soliciting and implicitly promising to remedy employee grievances, coercively interrogating employees about discussions they may have had with Board agents, and asking that employees provide them with copies of affidavits given to the Board. [HTML] [PDF]

The Board substituted a notice to employees because the notice in the judge's decision failed to include the requirement that the Respondent rescind its overbroad confidentiality rule.

(Members Liebman, Kirsanow, and Walsh participated.)

Charge filed by the Auto Workers; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Detroit between Oct. 31 and Dec. 15, 2005. Adm. Law Judge George Alemàn issued his decision Aug. 8, 2006.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

PPG Industries, Inc. (Auto Workers) Evansville, IN March 13, 2007. 25-CA-30018; JD(ATL)-9-07, Judge William N. Cates.

Eichorn Motors, Inc. (Auto Workers) Grand Rapids, MI March 14, 2007. 18-CA-18084, et al.; JD-19-07, Judge Paul Bogas.

Warren County Community Services Head Start, LLC (Service Employees District 1199) Lebanon, OH March 14, 2007. 9-CA-42454; JD-18-07, Judge Earl E. Shamwell, Jr.

Cerebral Palsy Association of New York State (an Individual) Staten Island, NY March 15, 2007. 29-CA-27584; JD(NY)-16-07, Judge Howard Edelman.

Chinatown Carting Corp. and Wayne Tragni, Nicolas Tragni and Damon Tragni, as Individuals (Teamsters Local 813 and an Individual) New York, NY March 13, 2007. 2-CA-34613, et al.; JD(NY)-15-07, Judge Eleanor MacDonald.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

T.D.S. Concrete, Inc., Feasterville, PA, 4-RD-2092, March 12, 2007 (Chairman Battista and Members Kirsanow and Walsh)

West Side Community House, Cleveland, OH, 8-RD-2061, March 15, 2007 (Chairman Battista and Members Kirsanow and Walsh)

First Student, Inc., Tecumseh, MI, 7-RC-23048, March 16, 2007 (Chairman Battista and Members Kirsanow and Walsh)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Danbury Ambulance Service, Inc., Danbury, CT, 34-RD-331, March 15, 2007 (Chairman Battista and Members Kirsanow and Walsh)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Fairmont General Hospital, Inc., Fairmont, WV, 6-UC-480, March 14, 2007 (Chairman Battista and Members Kirsanow and Walsh)

The Wackenhut Corp., Palm Beach Gardens, FL, 4-AC-87, March 14, 2007 (Chairman Battista and Members Kirsanow and Walsh)

Snapple Distributors, Inc., Newburgh, NY, 2-RC-23175, March 14, 2007 (Chairman Battista and Member Walsh; Member Kirsanow dissenting)
